



**NEW YORK STATE COMMISSION
ON CABLE TELEVISION**

CORNING TOWER BLDG., EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-4992
(518) 486-5727 FAX

WILLIAM B. FINNERAN - *Chairman*

BARBARA T. ROCHMAN
Commissioner
JOHN A. PASSIDOMO
Commissioner
GERARD D. DIMARCO
Commissioner
DAVID F. WILBER III
Commissioner
EDWARD P. KEARSE
Executive Director

DOCKET FILE COPY ORIGINAL

RECEIVED

January 8, 1993

JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECEIVED

JAN 11 1993

FCC - MAIL ROOM

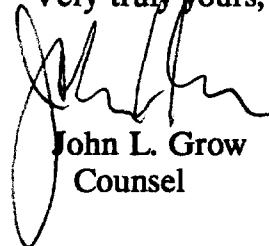
Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 92-263

Dear Ms. Searcy:

I am enclosing herewith an original and nine copies of comments submitted by the New York State Commission on Cable Television in the above-referenced proceeding.

Very truly yours,


John L. Grow
Counsel

Encs.

No. of Copies rec'd
List A B C D E

049

RECEIVED

JAN 11 1993

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

JAN 11 1993

FCC - MAIL ROOM

In the Matter of

**Implementation of Section 8 of the Cable
Television Consumer Protection and
Competition Act of 1992**

Consumer Protection And Customer Service

)
)
)
)
)

MM Docket No. 92-263

**COMMENTS OF THE NEW YORK STATE
COMMISSION ON CABLE TELEVISION**

**New York State Commission
on Cable Television
Corning Tower Bldg.
Empire State Plaza
Albany, New York 12223
(518) 474-4992**

**Dated: Albany, New York
January 8, 1993**

RECEIVED

JAN 11 1993

FCC - MAIL ROOM

In the Matter of

Implementation of Section 8 of the Cable
Television Consumer Protection and
Competition Act of 1992

Consumer Protection and Customer Service

)
)
)
)
)
MM Docket No. 92-263

RECEIVED

JAN 11 1993

**COMMENTS OF THE NEW YORK STATE
COMMISSION ON CABLE TELEVISION**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1. The New York State Commission on Cable Television ("NYSCCT") respectfully submits initial comments in response to the Notice of Proposed rulemaking ("NPRM") released in this docket December 11, 1992. NYSCCT is an independent Commission with broad authority to promote and oversee the development of the cable television industry in the State of New York. NYSCCT is expressly authorized by Section 815(6) of the Executive Law of the State of New York to represent the interests of the people of the State before the Federal Communications Commission ("Commission").

2. By this proceeding, the Commission seeks to implement the requirements of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Section 8, entitled "Consumer Protection and Customer Service," amends Section 632 of the Cable Communications Policy Act of 1984 ("Cable Act of 1984") (47 U.S.C. 552) to read as follows:

"(a) FRANCHISING AUTHORITY ENFORCEMENT.-

A franchising authority may establish and enforce-

"(1) customer service requirements of the cable operator and

"(2) construction schedules and other construction-related performance requirements, including construction-related performance requirements, of the cable operator.

"(b) COMMISSION STANDARDS.- The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing-

"(1) cable system office hours and telephone availability;

"(2) installations, outages, and service calls; and

"(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

RECEIVED

JAN 11 1993

FCC - MAIL ROOM

"(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.-

"(1) CONSUMER PROTECTION LAWS.- Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

"(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.- Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

Pursuant to subsection (b) of the amended statute, the Commission is required to become involved in the matter of customer service for the first time. Specifically, the Commission is directed to promulgate customer service standards in a number of defined areas.

3. At the outset, NYSCCT notes that it has extensive experience in the matter of customer service provided by cable television operators throughout the State of New York. Since 1973, NYSCCT has been involved in the receipt and resolution of complaints by cable television subscribers. In 1979, NYSCCT promulgated rules governing cable

television billing practices. These rules have been amended from time to time and now include a variety of other customer service matters. It should also be noted that NYSCCT provides a statewide toll-free assistance number to cable subscribers and has received in excess of 10,000 calls per month during the past two years. A copy of the current NYSCCT rules concerning customer service is included with these comments.

4. The standards to be promulgated by the Commission pursuant to Section 632(b) are minimum standards only. This is clear from the balance of amended Section 632 which, although redundant in some respects, permits state and local governments to impose more stringent or different customer service requirements in a variety of ways (*infra*, p. 5). It is also clear that the authority to enforce customer service standards resides solely with state and local governments. In this context, the Commission asks a number of pertinent questions concerning the implementation and enforcement process applicable to the standards to be promulgated in this docket.

5. The threshold issue, as noted by the Commission, is the "specific mechanism whereby the Commission's standards become 'service requirements' for local cable system operators." (NPRM, para. 4) In this regard, the Commission asks whether its standards are to be self-executing or whether some action by a franchising authority is necessary to impose the standards as legal obligations upon cable operators. Neither the statute nor the legislative history is entirely clear on this subject. But there is ample evidence that Congress was seriously concerned about the quality of customer service provided by cable television companies and, accordingly, the statutory changes should be

construed toward the end of improving customer service provided by the nation's cable operators at the earliest possible date. A comparison of the amended Section 632 with the original version supports the conclusion that the Commission's standards may apply immediately and that they may be enforced by state and local governments without the need for any prior bilateral action involving the cable operator.

6. Section 632, as enacted by Congress in the Cable Act of 1984, although awkward,¹ provided generally that any state or franchising authority could enact or enforce any consumer protection law to the extent not inconsistent with other provisions of the statute.² At the same time, there was some evidence that Congress may have intended that "customer service requirements" be set forth and imposed upon cable operators only "as part of a franchise (including a franchise renewal, subject to Section 626)." (Section 632(a)) Thus, there was a plausible basis for tension concerning the manner in which franchising authorities could impose customer service requirements.³

¹ Section 632(a) empowered a franchising authority to require "provisions for the enforcement of customer service requirements" without stating explicitly that franchising authorities could establish substantive customer service requirements.

² In the legislative history, Congress cited one example where a consumer protection law would be inconsistent with the Cable Act of 1984. It stated that "[a] state or franchising authority may not, for instance, regulate the rates for cable service in violation of Section 623 of Title VI and attempt to justify such regulation as a 'consumer protection' measure." (H.R. Report No. 98-934, p. 79) It has since been held that Section 623 of the 1984 Cable Act does not preempt every regulatory measure that may indirectly relate to rates. (Cable Television Association of New York, Inc. v. Finneran, et al., 954 F2d 91, (2d Cir. 1992))

³ It may have been argued by some that to the extent the original Section 632 authorized customer service requirements "as part of a franchise" that this was a limitation on the authority of state and local governments to regulate customer service requirements through general consumer protection laws. In this regard, it might also have been observed [FOOTNOTE CONTINUED ON NEXT PAGE]

7. The most significant change in Section 632, as amended by the Cable Act of 1992, is the absence of any suggestion that customer service requirements must be established only in the context of a franchise. New Section 632(a) provides simply that "[a] franchising authority may establish and enforce - (1) customer service requirements of the cable operator. . . ." And although new Section 632(c)(2) does specifically recognize the opportunity of a franchising authority and a cable operator to "agree to customer service requirements that exceed the standards established by the Commission," the very next sentence indicates that a municipality or a state may establish customer service requirements that exceed the Commission's standards or impose other standards by law or regulation. Thus, it is clear from a reading of new subsections (a) and (c)(2) that state and local governments are free to impose and enforce customer service requirements either pursuant to the cable television franchise or by separate law or regulation. In addition, since new subsection (c)(1) preserves the authority of states and franchising authorities to enact consumer protection laws, there is no longer any basis for any contention that a distinction exists between "customer service requirements" on the one hand and the scope or content of "consumer protection laws" on the other.⁴

[FOOTNOTE CONTINUED FROM PREVIOUS PAGE]:

that although the statute, itself, did not attempt to define customer service requirements in a manner that would permit distinction from consumer protection issues generally, the legislative history did contain a description of the types of customer service requirements that a franchising authority could enforce through a franchise. (H.R. Report No. 98-934, p. 79) NYSCCT never supported this interpretation of the original Section 623 but, in any event, it is an interpretation that cannot survive the changes made to Section 632 in the Cable Act of 1992 (*infra*, p. 5).

⁴ If anything, new subsection (c)(1) must be understood to liberalize the authority of states and franchising authorities in the area of consumer protection. In the original Section 632, such laws were permitted to the extent "not inconsistent with this title." The amended language permits such laws to the extent "not specifically preempted by this title." In other words, the burden of showing preemption is greater under the amended statute than before.

8. Given the impact of the amendments to Section 632, it fully appears that the Commission's minimum standards may be self-executing with respect to those franchise areas where there are either no standards concerning the same subject matter or lesser standards. Since customer service requirements need not be contained within the franchise in order to be binding and enforceable, there is no requirement under the statute (nor should the Commission independently seek to impose one) that a franchising authority initiate formal steps to amend the franchise bilaterally. The real issue is not whether the Commission's standards should apply immediately (or upon a reasonable effective date) to existing cable operators but what measures are reasonably necessary for a franchising authority to enforce a violation of the standards consistent with the due process rights of a cable operator.

9. NYSCCT submits that the Commission, itself, may cause its standards to apply immediately for purposes of making the cable operator's compliance thereunder a legitimate subject of review at franchise renewal time. Enforcing the standards in other ways is likely to require some action by the franchising authority or other appropriate governmental entity. Where customer service requirements exist either in a franchise or in a state or local law or regulation, it is likely that provisions also exist for the enforcement of such requirements. In these cases, it should be necessary only that the franchising authority give notice to the cable operator that the Commission's standards will be considered binding obligations of the company as of a date certain and will be enforced as such in accordance with existing provisions for enforcement of existing customer service requirements. In franchise areas where there are no existing standards, a franchising

authority that wishes to enforce the Commission's standards during the term of an existing franchise should provide the cable operator with notice of the procedures for enforcement (possibly by reference to provisions of an existing franchise) and the penalties or consequences (which also may be referenced in an existing franchise). If no existing procedure or penalties are readily adaptable, the franchising authority should adopt them on notice to the cable operator. Enforcement, of course, can be pursued in various forms. To the extent a franchising authority does not seek to impose penalties or forfeitures on a cable operator for violation of the Commission's standards but merely wishes to preserve its opportunity to compel compliance therewith by specific performance or injunctive relief, it should so notify the cable operator.

10. The Commission also asks a number of questions about the impact of amended Section 632 and its customer service standards upon existing franchise agreements. First, the Commission's standards should supersede existing franchises only to the extent they include requirements in excess of those, if any, contained within the franchise. Second, existing customer service requirements in a franchise to the extent they exceed Commission standards would continue to apply -- as if contained in a separate law -- until such time as a franchising authority determined to modify them by local law or regulation. There does not appear to be any limitation upon when this may occur. In other words, state and local governments can impose new customer service requirements at any time during the franchise term pursuant to new Section 632(c)(2).⁵

⁵ Lest it be argued that this construction of Section 632, as amended, is too liberal because it discounts the effect of existing franchise provisions concerning customer service [FOOTNOTE CONTINUED ON NEXT PAGE]

11. The Commission also asks for comment on the substantive customer service standards to be adopted in this docket with specific reference to the cable industry customer service standards recommended in 1990 by the National Cable Television Association ("NCTA"). The Commission further asks whether it should adopt single standards in all areas applicable to all cable television companies irrespective of size, including whether it should specifically exempt smaller systems or whether it might adopt a range of standards applicable to systems based primarily upon size.

12. As noted, NYSCCT has established certain minimum statewide consumer protection standards. Although NYSCCT standards do not encompass all areas identified in Section 623(b), it is the experience of NYSCCT that reasonable minimal standards generally can be both feasible and meaningful for systems of varying sizes. Certainly, in specific areas, e.g., service outages, rebates or refunds, a subscriber in a small cable system should be entitled to the same level of protection as a subscriber in a larger system. In any event, the Commission should be guided primarily in its creation of customer service requirements by the fact that its standards are minimum standards and that it is virtually impossible to craft a set of standards which would serve the needs of each and every community throughout the nation.

[FOOTNOTE CONTINUED FROM PREVIOUS PAGE]:

requirements, it should be recalled that the original Section 632(c) permitted state and local consumer protection laws coincidental with the franchise and also that in 1984 Congress superseded or preempted the existing provisions of franchise agreements which furthered the interests of franchising authorities (e.g., Section 623). Given the concern of Congress for the alleged poor quality of customer service, it is entirely consistent with that manifest intent that the standards promulgated by the Commission as well as the opportunity for states and local governments to enforce them and to adopt different standards be effective before the expiration of existing franchise terms.

13. As a general matter, the NCTA customer service standards constitute reasonable minimal customer service requirements suitable for adoption by the Commission. A few aspects of the NCTA standards, however, warrant comment. First, the NCTA standards in respect to billing appear to require only that bills will be "clear, concise and understandable." This standard is too vague to be meaningfully enforced by franchising authorities. NYSCCT suggests that the minimum Commission standard include a requirement that the bill include the name, address and telephone number of the cable operator, the amount due for services and equipment, the amount due for any late charges and the due date for payment. In addition, NYSCCT recommends that the rule expressly recognize the authority of systems under 10,000 subscribers, to use annual coupon payment books for billing purposes. Second, NCTA standards would require the cable operator to provide certain written information at the time of installation and at any time thereafter upon request by the subscriber. NYSCCT urges the Commission to include additional information identifying the telephone number, address and business office of the cable operator and the location at which bills may be paid and, also, to require that such information be provided to subscribers at least annually. Third, the NCTA standards would require customers to receive 30 days' advance notice of any rate or channel change within the control of the cable operator. This standard would be improved if it required specifically that such notice be in writing.

14. Section 632(b) requires the Commission to promulgate rules concerning cable system office hours and telephone availability. In respect to the former, the NCTA standards are based primarily on "normal business hours. . .Monday through Friday. . . ."

The standards also refer to supplemental hours on weekdays and/or weekends. Although normal business hours will certainly vary from system to system, it is suggested that some minimum number of hours per business day or business week would be appropriate. Also, as the Commission notes, "[b]ecause the highest levels of television viewing occur outside of . . . [normal business hours]. . . ." (NPRM, para. 12), the Commission should enhance the NCTA standard by requiring some provision for the receipt of telephone calls for service problems by a cable operator during nonbusiness hours either by an answering service or some kind of automated equipment. In addition, the Commission's standard should require that a local or toll-free telephone number for receipt of inquiries or complaints be available to all subscribers to the cable system. NCTA standards concerning telephone availability require comment in two respects. First, telephone availability is one area for which a single minimum standard is most difficult. On the one hand, as recognized by the NCTA, specific requirements concerning systematic measurement of availability may not be cost effective for smaller cable systems. On the other hand, a standard that might serve reasonably the needs for telephone availability for smaller systems would be woefully inadequate for the larger suburban and urban systems. In this case, then, the Commission might well consider a lesser standard for systems with fewer than 10,000 subscribers. Second, whatever the standard, it is virtually impossible for a franchising authority to monitor compliance on its own. Thus, the standards should obligate the cable operator to maintain records on calls received, calls answered, the number of rings, etc., and to retain such records for a minimum period of time, e.g., two years, during which the records would be available to the franchising authority or other appropriate governmental entity.

15. Finally, as noted by the Commission, installations, outages and service calls have been areas of considerable frustration for cable subscribers and would-be subscribers over the years. NCTA voluntary standards are marginally acceptable. The rules promulgated by NYSCCT do include provisions for credits in the event of certain service outages -- an outage of four continuous hours entitles the subscriber to a full day's credit -- and the Commission should consider amplifying the NCTA standard by a minimum credit requirement for total service outages of some minimum length. Since the Commission has residual authority to regulate basic service rates under the statute and primary authority to determine the unreasonableness of rates for cable programming services, it is arguably within the scope of the Commission's authority to provide for credits for service outages. In addition, where the NCTA standard requires that the installer or technician attempt to contact a customer when a scheduled appointment cannot be met, the Commission standard should require a cable company to provide a substitute service call or installation at no charge to the customer.

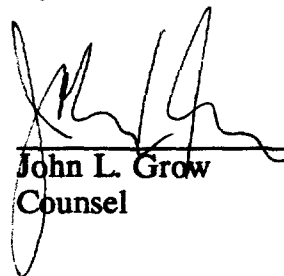
16. In sum, with a single exception of telephone availability, the Commission's customer service requirements need not contain a range of permissible standards depending upon the system or community size. State and local governments have ample authority to require more stringent or different standards where local needs warrant them. Insofar as the impact of minimum standards on very small systems, e.g., systems with fewer than 1,000

subscribers, the Commission could provide a general waiver absent affirmative action by the franchising authority to hold the cable operator accountable for compliance with the Commission's standards.

Respectfully submitted,

NEW YORK STATE COMMISSION
ON CABLE TELEVISION

By:



John L. Grow
Counsel

Dated: Albany, New York
January 8, 1993



NEW YORK STATE COMMISSION ON CABLE TELEVISION



- **SUBSCRIBER COMPLAINT PROCEDURES**
- **BILLING PROCEDURES**
- **DISCONNECTING PROCEDURES**
- **OUTAGES**
- **NEGATIVE OPTIONS**
- **NOTICE REQUIREMENTS FOR RATES AND PROGRAMMING**
- **EXTENSIONS OF SERVICES**
- **SERVICE CALLS TO THE HOME**

PART 590

PROCEDURES AND PRACTICE

(Statutory authority: Executive Law, art. 28, §§ 815, 816, 821;
Environmental Conservation Law, § 8-0113(3))

Sec.	GENERAL	Sec.	
590.1	Offices and office hours	590.37	Form of comments and replies; number of copies
590.2	Definitions	590.38	Oral argument and other proceedings
590.3	Requests for commission action	590.39	Commission action; effective date
590.4	Oppositions and replies	PROCEDURES APPLICABLE TO HEARINGS	
590.5	Subscribers' complaints; procedure	590.51	Hearings
590.6	Proceedings before the commission	590.52	Presiding officers; powers; disqualification
590.7	Intervention in commission proceedings	590.53	Notice of hearing
590.8	Practice before the commission	590.54	Transcript of testimony; copies of documents submitted
590.9	Notice to authorized representatives	590.55	Examination of witnesses
590.10	Censure or suspension of persons appearing before the commission	590.56	Exhibits
590.11	Form of papers filed with the commission	590.57	Official notice
590.12	Service of papers and proof of service	590.58	Adjournments and extensions
590.13	Withdrawal of papers	590.59	Briefs
590.14	Changes in information furnished to the commission	BILLING PRACTICES OF CALBE TELEVISION COMPANIES	
590.15	Mailing address and telephone number to be furnished by cable television companies	590.60	Applicability
590.16	Availability of logs and records for commission inspection	590.61	Definitions
590.17	Form of commission orders	590.62	Notification of billing practices
590.18	Declaratory rulings	590.63	Bill format, late charges, collection charges and downgrade charges
590.19	Petitions for reconsideration	590.64	Billing disputes
590.20	Ex parte communications	590.65	Advance billing
590.21	Computation of time	590.66	Credit for service outage
590.22	Suspension, amendment or waiver of rules	590.67	Discontinuance of service for nonpayment
PROCEDURES APPLICABLE TO RULEMAKING		590.68	Delinquent reconnet charge
590.31	Petitions for rulemaking	590.69	Notice of requirements for changes in cable television rates, charges and programming services offered
590.32	Action on petitions	590.70	Purposes
590.33	Commencement of rulemaking proceedings	590.71	Types of actions
590.34	Notice of proposed rulemaking	590.72	Procedure
590.35	Content of notice	590.73	Auxiliary equipment
590.36	Comments and replies	590.74	Notice requirements for rates, charges, programming and subscriber's rights

TITLE 9 EXECUTIVE

590.5 Subscribers' complaints; procedure. (a) Complaints by cable television subscribers will be accepted by the commission in any form, written or by telephone. The procedure with respect to such complaints shall be as follows:

(1) Whenever a subscriber complaint is filed, the cable television company named therein will be served by the commission with a copy of the complaint and a written notice calling the complaint to its attention and requesting a statement concerning the matter. The commission also will forward a copy of the complaint to the chief executive officer of the municipality in which the complainant resides. Within 10 days, or such other period as may be specified in the notice, the cable television company shall submit a written answer to the commission and shall serve a copy of said answer on the complainant and on the chief executive officer of the municipality. The answer must contain a statement of the action that has been taken to resolve the complaint and/or to preclude any recurrence of the matter complained of. If the subject of the complaint is the failure of the company to provide cable television service to a potential subscriber who has requested service, the commission may require the cable television company to provide, in addition to the information required by this paragraph, a map of the franchised area indicating information requested by the commission.

(2) Complaints received by the commission by telephone shall be recorded and kept on file. Where the nature of the telephoned complaint warrants, the commission may request written information from the complainant. In such cases, the commission shall follow the procedures specified in paragraph (1) of this subdivision.

(3) Where numerous complaints are made, or where it appears that complaints have not been resolved, the commission may make further inquiry, which may be formal or informal, and which may include a hearing or oral argument, or both.

(b) Every cable television company shall:

(1) adopt and file with the commission, in writing, its procedures for the report and resolution of subscriber complaints. The procedures may be in such form as contain such provisions as the company deems necessary, provided they are not conflict with any procedures, rules or regulations of the commission;

(2) inform each of its new subscribers of its complaint procedures by written notice at the time of initial subscription or reconnection to the cable television system;

(3) inform each of its subscribers by written notice annually of its complaint procedures. The notice shall inform the subscriber that any-unresolved complaint with the company may be referred to the commission pursuant to subdivision (a) of this section. Such notice also shall contain the address and telephone number of the commission and the in-WATS toll-free complaints number; and

(4) the notice required in paragraph (3) of this subdivision shall be given within one year of the effective date of this section.

(c) (1) The commission may delegate by written notice to any officers or employees of the commission authority pursuant to the provisions of this section to investigate, hear and resolve complaints between a cable television company and its subscribers concerning disputed bills, charges, deposits, service problems and other subscriber-related problems. Except in the instance of an appeal by any party, disposition of unresolved complaints will be determined by such officers or employees of the commission as the commission designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make a determination by conversation with the complainant or his or her representative, by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the cable television company (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant is accompanied and assisted by such friend, advisor or attorney as he or she desires, and company representatives are present. Officers or employees designated to consider complaints will afford both the complainant and the cable television company a fair and reasonable opportunity to present evidence pertinent to the complaint and challenge evidence submitted by the other party to the dispute. The complainant or cable television company complained of may obtain a written statement of the determination, including a brief reason for the conclusion. The party adversely affected by the determination of the officer or employee designated to consider the complaint may appeal to the commission. Any such appeal shall be in writing and set forth the specific basis for claiming error and shall as far as practicable follow the procedures prescribed for petitions for reconsideration provided in section 590.19 of this Part.

(2) After receipt of the answer to a complaint, and where the procedures described in paragraph (1) of this subdivision are not applicable or cannot reasonably resolve the issues raised by a complaint, the commission, on its own initiative, the recommendation of staff or the request of the complainant or cable television company, may call a public hearing upon notice utilizing the procedures set forth in section 590.51 et seq. of this Part.

(3) Pending resolution of complaints, the commission may require appropriate interim relief to either party. In the case of complaints regarding bills or deposits, the commission, without hearing or formal order, may, and in the absence of unusual circumstances shall, preclude discontinuance of service or the issuance of any notice of discontinuance during the commission's investigation of such complaint, upon such terms and conditions as it deems appropriate.

Historical Note

Sec. filed April 17, 1973; amds. filed: May 30, 1980; Aug. 3, 1982; Feb. 2, 1987 eff. Feb. 2, 1987. Amended (c)(1).

BILLING PRACTICES OF CABLE TELEVISION COMPANIES

590.60 Applicability. Every cable television company shall comply with the practices set forth in this Part 120 days from their effective date. These regulations provide for minimum billing practices, procedures and standards. Nothing contained herein shall prevent local governments from adopting more restrictive billing practices or procedures.

Historical Note

Sec. filed Jan. 18, 1979; amd. filed Oct. 16, 1979
eff. Oct. 16, 1979.

590.61 Definitions. (a) *Basic subscriber channel* shall mean any channel which is provided as part of the basic monthly service rate.

(b) A *billing dispute* shall mean a disagreement between a subscriber and a cable television company concerning:

- (1) credits for payments made by the subscriber to the cable television company;
- (2) credit or refund for service outage;
- (3) errors in billing amount; or
- (4) assessment of late charges.

(c) *Collection charge* shall mean a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account by personal visit at a subscriber's home or place of business.

(d) *Commission* shall mean the New York State Commission on Cable Television.

(e) *Late charge* shall mean a charge which is added to a cable television subscriber's account or bill for nonpayment of a previously due account.

(f) *Local office* shall mean the business office of the cable television company serving the municipality in which a billing dispute arises.

(g) *Service outage* shall mean a loss of picture or sound on all basic subscriber channels or on one or more auxiliary programming channels and which is not caused by the subscriber's television receiver nor the subscriber.

(h) *Downgrade charge* shall mean a charge imposed upon a subscriber for implementing a request by the subscriber for a change in service to a less expensive tier than the tier currently subscribed to.

Historical Note

Sec. filed Jan. 18, 1979; amds. filed: Oct. 16, 1979; Dec. 22, 1989; April 4, 1990 as emergency measure eff. April 4, 1990; June 19, 1990 as emergency measure, expired 60 days after filing; Aug. 31, 1990 eff. Sept. 19, 1990. Amended (h).

590.62 Notification of billing practices. (a) Every cable television company shall notify each of its subscribers, in a separate written notice, of its billing practices and payment requirements including the use of payment coupons. The notice shall describe or define, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g., payment due dates), late charges, downgrade charges, advance billing options, if any, procedures to be followed in billing disputes and credit to be given for service outages.

(b) Notice shall be given as follows:

- (1) to new subscribers, at the time of initial installation;
- (2) to all subscribers, whenever there is a change in the company's billing practices or payment requirements;
- (3) to all subscribers at least semiannually.

(c) Every cable television company:

- (1) shall file copies of its billing practices and payment requirements with the commission; and
- (2) shall maintain on file in its local office for public inspection for a period of two years copies of its billing practices and payment requirements and all advertisements, lists or other notifications regarding programming sent to or made available to the public. For purposes of this subdivision *advertisements, lists or other notifications* shall mean any commercial messages which a cable television company originates and causes to be disseminated to the public or its subscribers by means of radio, television or print, or pursuant to a printed directive, which relate to the service tiers, networks or programming offered by said company to its subscribers and the rates and charges therefor, except that such terms shall not include any commercial message concerning a network or programming which originates with the network or programmer independent of the cable television company.

Historical Note

Sec. filed Jan. 18, 1979; amds. filed: Oct. 16, 1979; Dec. 22, 1989; April 4, 1990 as emergency measure eff. April 4, 1990; June 19, 1990 as emergency measure, expired 60 days after filing; Aug. 31, 1990 eff. Sept. 19, 1990. Amended (b)-(c).

590.63 Bill format, late charges, collection charges and downgrade charges.

(a) Each subscriber bill shall:

- (1) include the name, address and telephone number of the company and the toll-free subscriber assistance telephone number of the commission;

- (2) shall itemize each category of service and piece of equipment for which a charge is imposed;
- (3) state the billing period, amount of current billing and appropriate credits or past due balances, if any.
- (b) Each subscriber bill shall specify a minimum time for payment which shall not be less than 15 days from mailing of the bill.
- (c) Any late charge permitted by law or by the franchise, if imposed upon the subscriber, shall be itemized on the subscriber's bill, or notice of delinquent payment in cases where coupon books are used.
- (d) If a late charge is to be imposed, it shall not be imposed sooner than 45 days after the mailing of the bill to the subscriber or the due date, if coupons are used.
- (e) No cable television company shall impose a collection charge upon any subscriber, except as prescribed in section 590.67(e) of this Part.
- (f) A cable television company may impose a downgrade charge upon the conditions and in the circumstances as follows:
- (1) subscribers have been notified of such charge in writing in at least 10-point type;
 - (2) the charge does not exceed the cost of the downgrade to the company;
 - (3) the downgrade is from a level of service which the subscriber has not maintained continuously for six months immediately preceding the date of the downgrade; and
 - (4) the downgrade was not requested by a subscriber affected by a significant programming change or a network change within 45 days of receipt by the subscriber of the notice required by section 590.74(b)(4) and (c)(4) of this Part.
- (g) This section shall be effective immediately upon filing the Secretary of State and shall supersede any commission rule inconsistent herewith including particularly, but without limitation, section 590.69 of this Part.

Historical Note

Sec. filed Jan. 18, 1979; amds. filed: Oct. 16, 1979; Dec. 22, 1989; April 4, 1990 as emergency measure eff. April 4, 1990; June 19, 1990, expired 60 days after filing; Aug. 31, 1990 eff. Sept. 19, 1990. Amended (f); added (g).

590.64 Billing disputes. (a) Every cable television company shall establish procedures for prompt investigation of any billing dispute registered by a subscriber. The procedures shall provide for at least 30 days from the date of receipt of the bill for the subscriber to register a billing dispute. The procedures shall provide that the subscriber remit the undisputed portion of the bill in question pending resolution of the portion in dispute and that the subscriber shall be responsible for paying the undisputed portion of current and future bills.

(b) Cable television service shall not be discontinued due solely to nonpayment of the portion in dispute during the period allowed herein for investigation of a billing dispute.

(c) The cable television company shall notify the subscriber, in writing, of the result of its investigation of the billing complaint within 20 working days of the registration of the complaint.

(d) If the complaint is not resolved within 30 days of the date it is registered with the company, complainant may refer the matter to the commission in accordance with

the provisions of section 590.5 of this Part. If referral is not made within 30 days, the company may commence its disconnection procedures in accordance with section 590.67 of this Part.

(e) The cable television company shall retain in its local office all billing complaint records for at least one year.

Historical Note

Sec. filed Jan. 18, 1979; amd. filed Oct. 16, 1979
eff. Oct. 16, 1979.

590.65 Advance billing. (a) Every cable television company shall notify its subscribers of any advance billing options available.

(b) A subscriber, upon request, shall be given the option of paying monthly. Use of coupon books for the remittance of monthly payments shall satisfy the monthly payment option request. If such coupon books are used by the company, no other bills for service are required to be sent out by the cable television company.

Historical Note

Sec. filed Jan. 18, 1979 eff. Jan. 18, 1979.

590.66 Credit for service outage. (a) Every cable television company shall give credit, for every service outage in excess of four continuous hours. The four-hour period shall commence at the time the cable television company first becomes aware of the outage.

(b) Whenever a cable television company may reasonably determine the existence and scope of a service outage, as, for example, a service outage caused by a major failure in the system's headend or distribution electronic equipment, which service outage exceeds four continuous hours, the cable television company shall issue a credit to each affected subscriber.

(c) In the event a cable television company cannot determine all subscribers affected by a service outage in excess of four continuous hours, credit shall be given to any eligible subscriber who makes application therefor by either written or oral notice within 90 days of the outage.

(d) The minimum credit shall be equal to one thirtieth times the applicable monthly charge for each 24-hour period during which a service outage continues for at least four hours.

(e) A cable television company shall be responsible for every service outage and shall provide credit to each affected subscriber who is entitled thereto pursuant to subdivisions (b) and (c) of this section.

(f) Prior written notice of a scheduled service outage due to system upgrade or rebuild shall be filed with the commission and the affected municipality. Every cable television company shall make a reasonable effort to inform subscribers in writing or electronically, in advance, of any scheduled service outages for equipment repair or replacement, system upgrade or rebuild, or on-going technical "sweeps" of the system.

Historical Note

Sec. filed Jan. 18, 1979; amds. filed: Oct. 16, 1979; Dec. 22, 1989 eff. Jan. 12, 1990.

590.67 Discontinuance of service for nonpayment. (a) A cable television subscriber shall not be considered delinquent in payment until at least 45 days have elapsed from the mailing of the bill to the subscriber or due date, if coupons are used, and payment has not been received by the company.

(b) No cable television company shall physically or electronically discontinue service for nonpayment of bills rendered for service until:

- (1) the subscriber is delinquent in payment for cable television service; and
- (2) at least five days have elapsed after a separate written notice of impending discontinuance has been served personally upon a subscriber; or
- (3) at least eight days have elapsed after mailing to the subscriber a separate written notice of impending discontinuance (for which postage is paid by the cable television company), addressed to such person at the premises where the subscriber requests billing; or
- (4) at least five days have elapsed after a subscriber has either signed for or refused a certified letter (postage to be paid by the cable television company), containing a separate written notice of impending discontinuance addressed to such person at the premises where the subscriber requests billing.

(c) Notice of service discontinuance shall clearly state the amount in arrears, the total amount required to be paid to avoid discontinuance of service, reconnection charges if applicable, and the date by which, and the place where, such payment must be made.

(d) No cable television company shall disconnect service for nonpayment on a Sunday, public holiday or a day when the local office of the company is not open for business without providing an opportunity for the subscriber to pay the amount in arrears.

(e) When a company is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill provided all other applicable provisions of this section have been followed.

(f) Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment, and no cable television company shall be required to issue an additional notice prior to discontinuance.

Historical Note

Sec. filed Jan. 18, 1979; amds. filed: Oct. 16, 1979; Dec. 22, 1989 eff. Jan. 12, 1990.

590.68 Delinquent reconnect charge. No cable television company shall impose a charge for the reconnection of service, the amount of which is based solely upon a consideration of whether the subscriber was previously in arrears for an account due said company.

Historical Note

Sec. filed Oct. 16, 1979 eff. Oct. 16, 1979.

590.69 Notice of requirements for changes in cable television rates, charges and programming services offered. See Section 590.74.

590.73 Auxiliary equipment. When a cable television company supplies auxiliary equipment such as a converter or other modifying device to a subscriber the company can expect reasonable care of such equipment by the subscriber. A cable operator shall notify the subscriber and the commission in writing of any charges to subscribers for lost, stolen or damaged converters. In the event such equipment is lost, stolen or damaged, and the cable television company seeks to charge the subscriber for such equipment, the company shall give written, dated notice to the subscriber of the amount sought and the subscriber's opportunity to refer the matter to the commission in accordance with the provisions of section 590.5 of this Title. If referral is not made to the commission within 30 days of the date of the notice, the company may commence its collection procedures.

Historical Note

Sec. filed Dec. 22, 1989 eff. Jan. 12, 1990.

590.74 Notice requirements for rates, charges, programming and subscriber's rights. (a) *Rates and charges.* Every cable television company shall provide notice of any changes in rates or charges for any cable television service. The notice shall be in writing and shall specify the service or services affected, the new rate or charge, including the amount of the increase and the change and the effective date thereof. Notice shall be provided at least 10 days prior to the effective date of any changes in rates or charges to the subscribers affected thereby, the commission and the franchising municipality. The notice to subscribers shall inform subscribers of the opportunity to request a downgrade or termination of service within 30 days of the receipt of the notice without any charge therefor and without any liability for payment of any higher rate or charge.

(b) *Significant programming change.* (1) *Definitions.* For purposes of this section:

(i) a *significant programming change* shall mean the removal or alteration of recurring programming which materially changes the quality or level of programming on a network; provided, however, such terms shall not include deletions of

programs mandated by the regulations of the Federal Communications Commission, nor shall it include deletions of programs that are distributed by the cable television company in lieu of such programs deleted pursuant to such regulations of the Federal Communications Commission;

(ii) a *network* shall mean a group of programs distributed, packaged, promoted or sold to subscribers as the offering of a single entity, including but not limited to, a channel or station; and

(iii) *service tier* shall mean a category of cable television services or other services provided by a cable television company and for which a rate or fee is charged by the cable television company, including, but not limited to, basic services, premium networks or services, recurring pay-per-view services and other categories of cable services for which there are additional charges.

(2) *Notice required.* Every cable television company shall provide notice of a significant programming change to the commission and to subscribers affected thereby.

(3) *Notice to commission.* Notice shall be provided to the commission no later than the later occurring of 45 days prior to the effective date of the change or within five business days of the date upon which the cable television company first knows of such change. The notice shall specify the recurring programming affected by the change, whether such recurring programming was, or will be, distributed as part of basic cable service or some other service tier immediately prior to the change and the effective date of the change.

(4) *Notice to subscribers.* Notice shall be provided to subscribers who are receiving services affected by such change in writing no later than the later occurring of 30 days prior to the effective date of such change or within 30 days of the date upon which the cable television company first knows of such change and by written on-screen visual message prominently displayed on the affected television program channel or channels, and on the program listing channel of the cable television system, if one is provided, at least once each hour for no less than a 30-day period.

(5) *Form and content of notice to subscribers.* Notice shall be directed to each affected subscriber as follows:

(i) by the mailing of a separate written notice to the subscriber's billing address of record; or

(ii) by a written notation printed on the subscriber's regular billing statement; or

(iii) by a written notice accompanying the subscriber's regular billing statement. Such notice shall specify the recurring programming affected by the change and the effective date of the change. Such notice shall also inform subscribers of the opportunity to downgrade or terminate service within 45 days of the receipt of the notice without charge for such termination or downgrade.

(c) *Network change.* (1) *Definitions.* For purposes of this subdivision:

(i) a *network change* shall mean the removal of a network from a service tier whether or not added to another tier or a substantial alteration of the character of a network by a cable television company or an affiliate it controls except that a network change shall not include the removal of a network from a service tier within 31 days of the date upon which such network was added to such service tier for promotional purposes, where such promotion was clearly disclosed to subscribers;